

1950

July 10

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David J. Vail, M.D.
Assistant Superintendent
New Hampshire State Hospital
Concord, New Hampshire

OCT 01 1998
CONCORD, N.H.

Dear Doctor Vail:

This is in reply to your letter of March 11, 1950, in which you request our opinion as to whether patients on "parole" or "convalescent status" from the State Hospital are eligible to receive Old Age Assistance payments provided that they meet all of the technical requirements necessary to qualify for such payments. Such a person would, of course, be eligible for such payments unless prohibited by law from receiving the same on account of his status as being on parole from the Hospital.

42 U.S.C.A., Ch. 7, Social Security, § 306, provides as follows:

"For the purposes of this subchapter, the term 'old-age assistance' means money payments to, or medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are sixty-five years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual (a) who is a patient in an institution for tuberculosis or mental diseases, or (b) who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof."

RSA 167:4 provides in part as follows:

"I. . . .

"II. . . .

"III. Public assistance shall not be granted to anyone who is an inmate of a public institution other than a patient in a public medical institution.

"IV. Public assistance shall not be granted to anyone who is a patient in an institution for tuberculosis or mental diseases.

"V. Public assistance shall not be granted to anyone who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof."

Accordingly, unless a person on "parole" or "convalescent status" from the State Hospital can be termed an "inmate of" or "patient in" the State Hospital within the meaning of the quoted terms as used in the statute he would be eligible for Old Age Assistance if he meets all of the other necessary requirements.

Mr. James J. Barry, Commissioner of Public Welfare, requested an opinion on this same question from this office by letter dated March 8, 1956. Assistant Attorney General Elmer T. Bourque ruled in response to this request that such persons were eligible for Old Age Assistance payments in an opinion dated March 14, 1956, a copy of which I am enclosing herewith for your convenience.

We concur in and confirm Mr. Bourque's aforesaid opinion for the reasons expressed therein. We further believe that the word "inmate" as used in the above quoted statutes must be given its ordinary accepted meaning which is, an occupant of an asylum, hospital, or prison. See 43 C.J.S., Inmates. It is further our understanding that convalescent status or parole is granted by the Hospital only to such persons as in the judgment of the staff of the Hospital have recovered sufficiently to make it probable that they would be able to adjust satisfactorily to life outside of the institution. The sole purpose of placing them on convalescent status rather than granting an outright discharge is to dispense with the necessity of a formal recommitment if it should prove that the patient was unable to adjust satisfactorily. In order that there may be a fair test of the patient's

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ability to adjust during the period of his convalescent status the Hospital exercises no control whatsoever over his movements or decisions. He is simply released into the custody of responsible relatives, friends, or a guardian who will presumably give him such assistance as they can and who will look out for his welfare. In other words, he is as effectively released from the control of the Hospital as he would be if an outright discharge were granted, the only difference being that in the event recommitment becomes necessary no formalities are required. For this reason as well as the others expressed herein and those expressed in Mr. Bourque's opinion of March 14, 1956, we conclude that a person on "convalescent status" from the State Hospital is not an inmate thereof, within the meaning of that term as used in the above quoted statutes, and is, therefore, eligible for Old Age Assistance payments provided he meets the necessary requirements.

Sincerely yours,

John J. Zimmerman
Assistant Attorney General

JJZ/lt

Encl.

cc: James J. Barry
Welfare Commissioner